

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Mahipal R. Erasani

Complainant

V.

Douglas P. Malarkey

Respondent

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Case No. 31836

Rental Facility: 5500 Friendship Blvd., Apt. 1105N, Chevy Chase, Maryland 20815 (Unlicensed)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 5th day of November, 2010, found, determined, and ordered, as follows:

BACKGROUND

On July 27, 2010, Mahipal R. Erasani, ("Complainant"), former tenant at 5500 Friendship Blvd., Apt. 1105N, Chevy Chase, MD ("Condominium"), an unlicensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which he alleged that his former landlord, Douglas P. Malarkey, owner of the Condominium ("Respondent"): (1) failed to refund any portion of his \$1,200.00 security deposit plus accrued interest within 45 days after the termination of his tenancy, in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) ("Real Property Article"); and, (2) failed to send him an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within the 45 days after the termination of his tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondent has forfeited the right to withhold any portion of his security deposit plus accrued interest for damages.

The Complainant asserts that he did not damage the Condominium in excess of ordinary wear and tear during his tenancy, and therefore, the Respondent had no reasonable basis to withhold any portion of his security deposit plus accrued interest.

The Respondent contended that the Complainant: (1) failed to prove that a fully executed lease was signed by all parties; and, (2) damaged the Condominium in excess of ordinary wear

and tear during his tenancy, and the costs he incurred to repair the damages exceeded the amount of the security deposit the Complainant paid.

The Complainant is seeking an Order from the Commission for the Respondent to refund his entire \$1,200.00 security deposit; and a penalty of up to three times the amount unreasonably withheld.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on September 7, 2010, the Commission voted to hold a public hearing on October 26, 2010. The public hearing in the matter of Mahipal R. Erasani v. Douglas P. Malarkey, Case No. 31836, was held on October 26, 2010.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant, Mahipal R. Erasani, and the Respondent, Douglas P. Malarkey.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence one exhibit offered by the Complainant, copy of an e-mail sent to the Respondent, dated March 2, 2010, identified as Complainant's Exhibit No.1. The Commission also entered into evidence one exhibit offered by the Respondent, a series of photographs allegedly taken after the Complainant vacated the Condominium showing its conditions, identified as Respondent's Exhibit No. 1.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On July 1, 2008, the Complainant signed a 6 month lease agreement ("Lease") for the rental of the Condominium, which stated that the tenancy was to commence on July 1, 2008, and to expire on December 31, 2008, for a monthly rent of \$1,400.00. However, this 6 month Lease was not signed by the Respondent and the tenancy under this Lease did not commence on July 1, 2008.

2. Based on the Complainant's credible testimony that the Lease was offered to the Complainant by a Realtor, Richard Farina, who was also interacting directly with the Respondent regarding the specific details of the Lease; the Commission does not find credible the Respondent's claim that the Lease is not valid because it lacks his signature.

3. On September 12, 2008, the Complainant paid the Respondent a security deposit in the amount of \$1,200.00, which amount is receipted in the Lease provided by the Complainant (Commission's Exhibit 1, Page 2).

4. The Commission finds credible the Complainant's testimony regarding the payment of the security deposit as evidenced by a photocopy of a check from the Complainant payable to the Respondent in the amount of \$1,200.00 dated September 12, 2008 (Commission's Exhibit #1, page 5).

5. The Commission finds that a legally binding landlord-tenant relationship existed between the Complainant and the Respondent which commenced on September 14, 2008. This finding is based on both the credible testimony of the Complainant and the credible testimony of the Respondent that he received payment of a security deposit for the Condominium and rental payments for the time period September 2008, through December 2008.

6. The Commission finds credible the Complainant's testimony that he requested a six month lease renewal from the Respondent at the expiration of the Lease, December 31, 2008, which the Respondent refused.

7. On December 31, 2008, the Complainant vacated the Condominium, having paid rent in full to the Respondent through that date.

8. The Commission finds credible the Respondent's testimony that there was evidence of damage at the Condominium after the Complainant vacated. The Commission also finds credible the Respondent's testimony that the alleged damages were not repaired after the Complainant vacated the Condominium.

9. The Commission finds credible the Respondent's testimony that he sold the Condominium at a loss; however, the Respondent failed to produce any probative evidence that he incurred any actual costs to repair damages to the Condominium after the termination of the Complainant's tenancy.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article, "The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord." Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred, and "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission finds that the Respondent failed to send such a list to the Complainant within 45 days after the termination of his tenancy, which constitutes a violation of Section 8-203(g)(1) of the Real Property Article. Therefore, pursuant to Section 8-203(g)(2), the Respondent forfeited his right to withhold any portion of the Complainant's security deposit for damages.

2. The Commission concludes that due to the length of the tenancy (three and a half months) no interest is due by the Respondent on the \$1,200.00 security deposit.

3. The Commission concludes that the Respondent's failure to handle and dispose of the Complainant's security deposit (\$1,200.00) in accordance with the requirements of the

applicable provisions of Section 8-203, "Security deposits," of the Real Property Article, has caused a defective tenancy.

4. Although the Commission concludes that the failure by the Respondent to refund any portion of the Complainant's security deposit was unreasonable and constitutes a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord's conduct in wrongfully withholding all or part of the Complainant's security deposit, whether the Landlord acted in good faith, and any prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondent's conduct did not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainant's request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$1,200.00**, which sum represents the Complainant's security deposit with no interest accrued.

Commissioner Luther Hinsley, Commissioner Nancy Cohen, and Commissioner Katia G. Cervoni, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Douglas P. Malarkey, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Mahipal R. Erasani, in the amount of \$1,200.00.

The Respondent, Douglas P. Malarkey, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$1,200.00) if he seeks a stay of enforcement of this Decision and Order.

Katia G. Cervoni, Panel Chairperson

Commission on Landlord-Tenant Affairs